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Edward A. Ludvig

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EXAMINER

STANLEY, MARK P

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,153	<b>Applicant(s)</b> LUDVIG ET AL.	
	<b>Examiner</b> MARK P. STANLEY	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-22 and 24-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to the amendment filed on 4/14/2008.
2. Claims 1-2, 4-22, and 24-28 are pending in the application. Claims 3 and 23 have been canceled. Claims 1, 12, 20-22, 24-28, and 28 have been amended

### ***Response to Arguments***

3. Applicant's arguments filed 4/14/2008 with respect to claims 1-2, 4-22, and 24-28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 2-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al. (US 6,698,020 A1 hereinafter Zigmond) in view of Eldering (US 6,216,129 B1 hereinafter '129).

**Regarding claim 1**, Zigmond teaches an ad insertion device (Fig. 3 item 60, Fig. 5 item 80) which stores viewer and system information (item 82) and processes the data via correlation with stored ads in an ad repository (item 86) to determine an ad for insertion into tv programming via a switch (item 90), where viewer and system

information data includes the individual's consumer purchase related data including spending habits, anticipated major purchases, and recorded online purchases (col. 10 lines 22-27 and 61-63, col. 13 lines 7-11).

But, while Zigmond teaches the use of a login system to properly and uniquely identify the individual with their corresponding consumer data and further associate a unique client device with the individual and their consumer data upon login (col. 9 lines 56-65) and while it would be necessary to use some form of identification to properly relate an individuals online purchases with that specific individual when storing the consumer data on that given individual to be used upon login, Zigmond does not explicitly state the use of a membership card such that "the consumer data comprises data collected by a retail store in association with a membership card that is assigned to the individual and comprises a unique consumer ID".

However, '129 does teach an advertisement selection system which correlates subscriber profiles with ad characterizations to target advertisements toward the given subscriber, where the subscriber profile does include point of purchase data at places such as grocery stores and department stores, which is then transmitted to the advertisement selection system via internet or private network (col. 6, lines 33-51). The consumer ID to uniquely identify the subscriber and the purchases can be a credit card (col. 8, lines 13-17), which is essentially identical to a membership card in the purpose of tracking and identifying a subscriber's purchases at points of purchases.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Zigmond for targeting

advertisements to a specific individual in a household via identifying the individual upon login to correlate the specific individuals consumer data and associated login device with the teachings of '129 to uniquely identify an individuals consumer data via use of a membership card. One would have been motivated to do so for the purpose of improved tracking and retrieval of data on a subscriber for improved targeting of advertisements through the use of a card when the subscriber performs activities at associated retail stores.

**Regarding claim 2,** Zigmond and '129 disclose "the method as recited in claim 1 wherein the individual comprises a subscriber to a broadcast television system" (see Zigmond col. 13 lines 49-64, the viewer is the subscriber).

**Regarding claim 4,** Zigmond and '129 disclose "the method as recited in claim 1 wherein the consumer data comprises an indicator of a vendor associated with a product that the individual has purchased" (see '129, col. 1 lines 28-32, col. 8 lines 56-59).

**Regarding claim 5,** Zigmond and '129 disclose "the method as recited in claim 1 wherein the consumer data comprises an indicator of a category associated with a product that the individual has purchased" (see '129, col. 8 lines 56-59).

**Regarding claim 6**, Zigmond and '129 disclose "the method as recited in claim 1 wherein the processing comprises: accessing the consumer data associated with the individual; and generating a profile associated with the individual based on the consumer data, such that the profile indicates a product category associated with a product purchased by the individual" (see '129, col. 6 lines 26-51, a profile for correlating with ads is generated using consumer data associated with the individual)

**Regarding claim 7**, Zigmond and '129 disclose "the method as recited in claim 6 wherein the product category is selected from a group of product categories comprising frozen foods, soft drinks, snack foods, cereals, diet foods, personal hygiene, and dental hygiene" (see '129, col. 6 lines 33-41).

**Regarding claim 8**, the claim is rejected for the same reasoning as claim 4 above.

**Regarding claim 9**, Zigmond and '129 disclose "the method as recited in claim 1 wherein the targeting comprises:  
associating a consumer profile characteristic with an advertisement to be targeted;" (see Zigmond col. 12 lines 15-24 ads are assigned parameters for associating with consumer profile data)

“broadcasting data identifying the consumer profile characteristic associated with the advertisement to be targeted to enable a client device to determine whether or not to tune to the targeted advertisement; and” (see Zigmond col. 12 lines 15-32)

broadcasting in a first data stream a default, non-targeted advertisement, while simultaneously broadcasting in a second data stream the advertisement to be targeted” (see Zigmond col. 7 lines 30-38, col. 15 line 66-col. 16 line 25, Fig. 5, tv programming with default ads are broadcast to item 90, while targeted ads may simultaneously be broadcast to item 84, where item 88 determines whether to switch from the tv programming with default ad to the broadcast targeted ad, where the ads are streamed and ad repository is removed)

**Regarding claim 10**, the claim is rejected for the same reasoning as claims 4 and 5 above.

**Regarding claim 11**, the claim is rejected for the same reasoning as claim 1 above, where both Zigmond and ‘129 disclose the method of claim 1 and the use of computer-readable medium with executable code for performing the method of claim 1.

3. Claims 12-22, 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US 2004/0148625 A1 hereinafter Eldering) in view of Aras et al. (US 5,872,588 hereinafter Aras).

**Regarding claim 12**, Eldering discloses “a system comprising:

a profiling server configured to generate consumer profiles associated with broadcast television system subscribers;" ([0030]-[0031], Fig. 1, item 108 the subscriber characterization module)

"a targeting server configured to maintain consumer profile characteristics in association with targeted advertisements; and" ([0030]-[0031], Fig. 1, item 110 the correlation module determines related ads based on items 108 and 102, the ad and subscriber characterization modules)

"a broadcast transmitter configured to broadcast consumer profile data and targeted advertisements over a network to multiple client devices" ([0030]-[0031], [0033], Fig. 1, item 114 the ad insertion module handles transmission of targeted advertisements, [0033] describes giving the subscriber access to their profile data, and).

But, Eldering does not explicitly state "multiple client devices each having a unique client device ID, wherein each client device comprises a subscriber profile data repository configured to maintain consumer profile data comprising a unique subscriber ID and the unique client device ID"

However, Aras teaches collecting data on a subscriber via the subscriber's client device for targeting of advertisements (col. 6 line 32-36), where multiple client devices (Fig. 4 item 111) each storing a unique subscriber ID and a unique client device ID stored (col. 17 lines 32-36) are used for transmitting collected data on the subscriber stored on the device upstream (col. 17 line 57- col. 18 line 9, Fig 14, item 1407 stored subscriber data with item 1403 the unique subscriber id and item 1401 the unique client device ID are transmitted upstream)



Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Eldering for targeting advertisements via profiling server and targeting server with the teachings of Aras for identifying specific subscribers and client device IDs when using multiple client devices. One would have been motivated to do so for improving ad targeting by providing means uniquely identifying a subscriber ID with a device ID out of multiple client devices available.

**Regarding claim 13**, Eldering and Aras disclose “the system as recited in claim 12 wherein the profiling server comprises: a profiling user interface configured to enable a user to enter rules that define how the profiling server communicates with a customer loyalty data repository from which consumer purchase data can be extracted” ([0037], [0058]-[0059], Fig. 1, where the profiling server and customer loyalty data repository operations are contained within item 108 the subscriber characterization module handled by the profiler and operator).

**Regarding claim 14**, Eldering and Aras disclose “the system as recited in claim 13 wherein the profiling user interface is further configured to enable a user to indicate specific values that may be used in defining a subscriber profile” ([0064]-[0065], Fig. 1, Fig. 5, where the user determines specific values for the subscriber characterization vector to determine correlation between the advertisements and the subscriber).

**Regarding claim 15**, Eldering and Aras disclose “the system as recited in claim 14 wherein the specific values comprise at least one of a product vendor and a product category” ([0037]-[0039], [0058]-[0059], Fig. 1, where the subscriber data can include purchase records and product preferences, a vendor and category associated with a product purchase and tracked in the product preferences and purchase record).

**Regarding claim 16**, Eldering and Aras disclose “the system as recited in claim 12 wherein the profiling server comprises: a subscriber profile data repository configured to maintain consumer profile data associated with subscribers to a broadcast television system” ([0032], Fig. 1, item 108 the subscriber characterization module performs the operations of the subscriber profile data repository).

**Regarding claim 17**, Eldering and Aras disclose “the system as recited in claim 12 wherein the targeting server comprises: a targeting user interface configured to enable a user to specify consumer profile characteristics to be associated with targeted advertisements” ([0038]-[0039], Fig. 1, item 102 the ad characterization module, where the user is the advertiser).

**Regarding claim 18**, Eldering and Aras disclose “the system as recited in claim 12 wherein the targeting server comprises: a multicast message generator configured to generate a message comprising: a transport ID that identifies a data stream over which a particular targeted advertisement is scheduled to be broadcast; a duration of the

particular targeted advertisement; and a consumer profile characteristic associated with the particular targeted advertisement” ([0075]-[0076], [0078], Fig. 9 where an ad is given an available slot in a data stream for a set duration to be inserted by item 114 the ad insertion module).

**Regarding claim 19**, Eldering and Aras disclose “the system as recited in claim 18 wherein the broadcast transmitter is further configured to broadcast the message that is generated by the multicast message generator” ([0090]).

**Regarding claim 20**, Eldering and Aras disclose “a client device having a unique client device ID, the client device comprising:

- a first tuner configured to tune to a first network channel over which broadcast television program content is received;

- a second tuner configured to tune to a second network channel over which broadcasted television subscriber profile data may is received;

- a subscriber profile data repository configured to maintain consumer profile data comprising a unique subscriber ID and the unique client device ID; and” ([0032], [0083]-[0084], Fig. 10, where multiple advertisements are being transmitted across a network a subscriber’s device must be aware of the ID of the subscriber being used such that the device may appropriately target and receive the advertisement thus a unique ID being used to relate a device, subscriber, and subscriber profile must be stored on the device)

“a profile filter configured to direct the first tuner to tune to an alternate network channel over which a targeted advertisement may be received when a consumer profile characteristic associated with the targeted advertisement matches the television subscriber profile data” ([0012], [0083]-[0086], [0090], Fig. 10, where targeted ads are transmitted on a separate stream to be inserted into the original broadcast stream, the ads can be inserted by various methods as described in [0083]-[0086], including the use of in-band and out-of-band channels and transmitting synchronously or asynchronously as described with [0083] involving the use of multiple tuners as described in [0090]).

**Regarding claims 21**, Eldering and Aras disclose “the client device as recited in claim 20 wherein the first network channel comprises an in-band network channel” ([0083] describes the use of in-band and out-of-band channels, where the channel for the standard broadcast television program content is the in-band channel).

**Regarding claim 22**, Eldering and Aras disclose “the client device as recited in claim 20 wherein the second network channel comprises an out-of-band network channel” ([0083] describes the use of in-band and out-of-band channels, where the channel for the targeted advertisement is the out-of-band channel).

**Regarding claim 24**, Eldering and Aras disclose “one or more computer-readable media comprising computer-readable instructions which, when executed, cause a computer system to:

associating a consumer profile characteristic with a targeted advertisement;  
upon detection of an advertisement avail that is to include a targeted advertisement, generating a message that identifies the consumer profile characteristic that is associated with the targeted advertisement, a duration of the targeted advertisement, and a transport ID that identifies a data stream over which the targeted advertisement is scheduled to be broadcast; and

broadcasting the message over a network to one or more client devices, wherein based on a client device ID, each client device determines when the client device ID is associated with the client device and the client device acquires the associated consumer profile” ([0078]-[0079], [0088]-[0091], where multiple advertisements are being transmitted across a network a subscriber’s device must be aware of the ID of the subscriber being used such that the device may appropriately target and receive the advertisement thus a unique ID being used to relate a device, subscriber, and subscriber profile must be stored on the device).

**Regarding claim 25,** Eldering and Aras disclose “the one or more computer-readable media as recited in claim 24, wherein the method further comprises: simultaneously broadcasting a default advertisement on a first data stream and the targeted advertisement on a second data stream” ([0088]-[0091]).

**Regarding claim 26,** Eldering and Aras disclose “one or more computer-readable media comprising computer-readable instructions which, when

executed, cause a client device computer system to perform a method, the method comprising:

receiving consumer profile data associated with a broadcast television system subscriber; wherein based on a client device ID, the client device determines, when the client device ID is associated with the client device and the client device acquires the associated consumer profile data: (a subscriber ID is used to associate a subscriber with a client device)

receiving a message comprising a consumer profile characteristic associated with a targeted advertisement scheduled for broadcast;

determining whether the consumer profile data associated with the broadcast television system subscriber matches the consumer profile characteristic associated with the targeted advertisement; and

in an event that the consumer profile data matches the consumer profile characteristic, tuning from a first data stream to an alternate data stream over which the targeted advertisement is to be broadcast” ([0088]-[0091], where the computer-readable media and computer described in [0088]-[0091] carry out the process described in [0030]).

**Regarding claim 27,** Eldering and Aras disclose “the one or more computer-readable media as recited in claim 26 wherein the message further comprises a transport ID that identifies the alternate data stream” ([0083], [0088]-[0091], the stream must be identified by some means in order to switch from one tuner for the in-

bound channel to the second tuner for out-of-band channel, where [0090] describes multiple tuners and [0083] describes use of in-band and out-of-band channels).

**Regarding claim 28**, Eldering and Aras disclose “the one or more computer-readable media as recited in claim 26 wherein the message further comprises a duration associated with the targeted advertisement, and wherein the method further comprises:

after being tuned to the alternate data stream for a time period indicated by the duration, tuning back to the first data stream” ([0088]-[0091], where it is necessary that following the reception of the targeted advertisement after a set duration, the system would return to the original program, where [0084]-[0085] describes inserting a targeted ad with the use of multiple streams).

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK P. STANLEY whose telephone number is (571)270-3757. The examiner can normally be reached on 8:00AM - 5:00PM Mon-Fri EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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